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**Federal Communications Commission**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20554

ORIGINAL

In the Matter of

Implementation of the Local Competition  
Provisions in the Telecommunications  
Act of 1996

CC Docket No. 96-98

**COMMENTS OF  
NORLIGHT TELECOMMUNICATIONS, INC.**

Norlight Telecommunications, Inc. ("Norlight") hereby submits comments in response to the Federal Communications Commission's ("Commission") January 24, 2001 Public Notice inviting input regarding the use of unbundled network elements ("UNEs") to provide exchange access service.<sup>1</sup>

**I. Introduction**

Norlight is a competitive telecommunications provider headquartered near Milwaukee, Wisconsin. As part of an organization founded in 1937, the telecommunications company was initially founded in 1972 as Midwestern Relay Company to offer microwave transmission services through Wisconsin. Over the years, Norlight has expanded its service capabilities and its network, which includes a fiber optic system that will soon span six Midwestern states. Through this network, Norlight offers advanced services to various markets, including rural and other underserved markets throughout the Midwest.

Norlight's primary business is dedicated, high-speed data transmission between government agencies, universities, and small to midsize businesses with multiple office locations. For this and other services, including wholesale transport services, Norlight is able to

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<sup>1</sup> See *Comments Sought on the Use of Unbundled Network Elements to Provide Exchange Access Service*, CC Docket No. 96-98, Public Notice, DA 01-169 (rel. Jan. 24, 2001).

rely on its extensive fiber-based network. However, Norlight must rely on incumbent local exchange carrier (“ILEC”) loop and transport facilities as the critical pathway from an end user customer to Norlight’s network. To date, Norlight has been forced to obtain these facilities as dedicated special access circuits at the ILECs’ tariffed rates. While Norlight has developed a successful business model offering high quality and highly secure services to customers as a competitive alternative, Norlight is increasingly squeezed by the high cost of tariffed access services, and its ability to compete is being increasingly strained.

In the *UNE Remand Order*,<sup>2</sup> the Commission opened an important door for Norlight to explore additional service options and more effectively and competitively utilize its substantial network investments. In short, the Commission ordered ILECs to offer existing combinations of loops and transport at cost-based UNE prices instead of inflated special access rates. In doing so, the Commission eliminated a substantial and prejudicial cost barrier to effective competition in the advanced services and other telecommunications service markets. With this ruling, Norlight would conceivably no longer be faced with the Hobson’s choice of facing either monopolistic ILEC access rates or prohibitive costs to, in many cases, unnecessarily duplicate a ubiquitous, pre-existing local network. Instead, the Commission set the stage for a level and streamlined, market-driven competitive playing field that freed Norlight’s resources to explore, expand, and extend new and better services and facilities to end user customers.

Within three weeks of opening this door for Norlight and other facilities-based competitors, the ILECs convinced the Commission to close this door (at least temporarily) with

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<sup>2</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) (“*UNE Remand Order*”).

the *Supplemental Order* and, thereafter, a *Supplemental Order Clarification*.<sup>3</sup> The Commission found that it had “underestimated the extent of the policy implications” of allowing competitors to use ILEC loop and transport combinations to provide exchange access services. The Commission credited its revisit of this issue to post-*UNE Remand Order* ILEC *ex parte* letters in which ILECs argued that use of unbundled loop and transport combinations for exchange access would increase ILEC local rates, undermine universal service, or both. The Commission noted, however, that the ILECs had made the same argument in *ex parte* filings several months before the *UNE Remand Order* was released. The Commission now invites comments on whether and, if necessary, to what extent it can or should impose limitations on a competitor’s use of unbundled loop and transport combinations in light of ILEC special access revenue concerns.

In sum, Norlight submits there is no basis for the Commission to revisit its original position in the *UNE Remand Order* and urges the Commission to refrain from placing limits on a competitor’s conversion of special access loop and transport circuits to UNE combinations. Moreover, even if the Commission limits a competitor’s use, the limits should be narrowly tailored and short lived, and, at a minimum, clearly preserve a competitor’s right to use unbundled loop and transport combinations for dedicated data transmission (e.g., frame relay, ATM, IP) and other advanced services. Norlight’s position as a regional provider of high-speed, secure data services puts it in position to uniquely and substantially benefit as a result of the Commission’s actions in this regard. Through this proceeding, the Commission truly has the opportunity to foster the provision of advanced services by competitive carriers and to overcome a major obstacle to Norlight’s continued service of this marketplace.

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<sup>3</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order, FCC 99-370 (rel. Nov. 24, 1999) (“*Supplemental Order*”); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-183 (rel. June 2, 2000) (“*Supplemental Order Clarification*”).

## II. Discussion

The Commission's Public Notice essentially raises two distinct inquiries that are both centered on "impairment:" (1) whether competitors are impaired if they cannot use unbundled loop and transport combinations for services other than local exchange service; and (2) whether universal service will be impaired if competitors can use unbundled loop and transport combinations for services other than local exchange service.

The Commission has already answered the first of these two questions (i.e., competitor impairment) in this docket. In the *UNE Remand Order*, the Commission determined for both loops and transport that viable competitive alternatives do not exist for competitors and that competitors are impaired without cost-based access to ILEC facilities. In now asking whether this changes if a provider is offering local exchange or exchange access services over these facilities, the Commission appears to be pursuing a phantom distinction. While there are obvious differences between the local exchange and exchange access service markets, there is no difference in the aspect of these markets that feeds the "impairment" analysis: the availability of alternatives outside of the ILEC's network. In the *UNE Remand Order*, the Commission looked primarily to the availability of loops and transport deployed by competitive providers and the cost and availability of self-provisioning loops and transport, and found that neither option eliminated a provider's competitive impairment without access to unbundled ILEC loops and transport. These factors do not change based on whether the facilities are used for local exchange or exchange access service. Competitive providers face the same prohibitive self-provisioning costs. There is also the same limited amount and availability of competitor-deployed facilities whether these facilities are used for local exchange or exchange access service. In short, a competitor's loop and transport options (outside of the ILEC's network) do

not change based on whether local exchange or exchange access services are or can be provided over those facilities.

Norlight believes that any attempt to distinguish facilities used for local exchange from facilities used for special access outside of the ILEC's network is simply a pretext on the part of the ILECs to re-litigate the Commission's impairment decisions in the *UNE Remand Order*. Norlight urges the Commission not to undergo the complete reevaluation of the thoughtful and reasoned determinations it has already made in *UNE Remand Order*. Competitive providers, like Norlight, are no less impaired without access to unbundled loop and transport combinations for exchange access service than they are impaired without access to the same combinations for local exchange service.

With regard to ILEC claims about universal service, Norlight believes again that the ILECs are attempting to escape losing (or simply delay losing) an inflated and monopolistic special access revenue stream. As other parties in this proceeding have noted, the ILECs' concerns about special access are not directly about universal service; they are about the ILECs' bottom line and preserving an artificially inflated cash flow that effectively requires competitors to subsidize the ILECs' local exchange and other service offerings. Norlight also agrees with other commenting parties that the ILECs' claims of revenue losses and the impact on universal service are overstated. Indeed, by eliminating artificial cost and price barriers for competitors, Norlight believes that the Commission will create a more market-driven, streamlined competitive market that will actually improve universal service, and increase service quality and options for all telecommunications consumers.

The Commission should not impose any local service or similar restriction on the use of unbundled combinations of loops and transport. Competitors that are impaired if they are unable

to use UNE combinations are competitively impaired regardless of whether they intend to use UNE combinations to provide circuit switched traffic or intend to use the combinations for data transmission and advanced services. Moreover, the Commission has in the past encouraged the provisioning of bundled service offerings, including, for example, data and voice. Any rule that the Commission issues here should foster and promote the ability of carriers like Norlight to offer such bundled offerings. In the event the Commission does, however, limit the use of UNE combinations, the limitations should be as narrowly tailored as possible and should be phased out over a short timeframe. Indeed, the only limitation, if any, which addresses the primary concern over diminished special access revenues is one based on circuit switched traffic. As other parties in this proceeding have noted, the majority of special access circuits implicated by potential UNE conversions are those devoted to circuit switched exchange services. As stated by the Commission, “today, both incumbent LECs and requesting carriers are at the early stages of deploying innovative technologies to meet the ever-increasing demand for high speed, high-capacity advanced services.”<sup>4</sup> The availability of these new and innovative technologies should not be stunted by sweeping data and advanced services circuits into any limitation that may be created to curtail conversions of special access circuits to UNE combinations. The Commission should, therefore, make clear that special access circuits used for data transmission and advanced services (including, but not limited to, xDSL, frame relay, ATM, and IP services) are available as unbundled loop and transport combinations.

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<sup>4</sup> See *UNE Remand Order* at ¶ 14.

### **III. Conclusion**

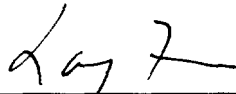
Norlight is an emerging facilities-based carrier that seeks to utilize its network and resources in a manner that will provide end user customers in the Midwest with innovative, high-quality telecommunications services. While Norlight continues to expand and evolve its fiber-based network and service capabilities, it is still faced with a market in which it must rely, in some cases, on loop and transport facilities of the ILEC. In these cases, Norlight should not have to subsidize the service offerings of the ILEC (i.e., a competitor) through artificially inflated special access rates to reach customers. Norlight should also not have to sacrifice valuable financial resources that it otherwise can and desires to expend on developing and expanding its service offerings to compete with the very carrier that is reaping the benefit of these lost resources – the ILEC.

In a market that is reacting harshly to the slow pace of competition in the telecommunications industry, it is imperative that the Commission advance rules that facilitate competitive entry. In the *UNE Remand Order*, the Commission fashioned an effective tool to eliminate competitive pricing barriers for loops and transport. The instant proceeding, however, may serve to abandon this tool and return to ILEC pricing based on historical monopoly market power, not competition or efficiency.

The Commission should not limit the availability of unbundled combinations of loops and transport based on the services offered over those facilities. Alternatively, to the extent the Commission does insulate ILECs from their UNE obligations, any limitations should be as

narrowly tailored as possible to achieve the protection desired by the Commission, and at a minimum should establish that unbundled loop and transport combinations may be used to provide data transmission and other advanced services.

Respectfully submitted,



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April 5, 2001



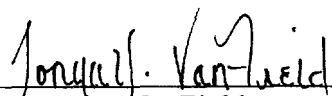
**CERTIFICATE OF SERVICE**

I, Tonya Y. VanField, hereby certify that a copy of the foregoing Comments of Norlight Telecommunications, Inc. in CC Docket No. 96-98 (DA 01-169) was served this 5th day of April, 2001, via hand delivery and first-class mail, upon the following:

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